IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

1. S.B. CIVIL WRIT PETITION NO.2799/2006
   Aman Singh & Ors. vs. D.J., Balotra & Ors.
2. S.B. CIVIL WRIT PETITION NO.677/2007
   Aman Singh & Ors. vs. D.J., Balotra & Ors.
3. S.B. CIVIL WRIT PETITION NO.678/2007
   Aman Singh & Ors. vs. D.J., Balotra & Ors.

Date : 24.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.Sajjan Singh, for the petitioners.
Mr.RR Nagori, for the respondents.

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Heard learned counsel for the parties.

These three writ petitions have been preferred because the present petitioners filed one suit for injunction and the respondents filed two suits for injunction with respect to the properties involved in these three suits. The injunction applications were filed by both the parties and, therefore, three misc. Cases were registered for deciding

these three injunction applications. In the suits filed by the respondents, injunction was granted by the trial court whereas the injunction application of the petitioners was dismissed.

The appellate court dismissed all the three appeals preferred by the petitioners vide order dated 17.5.2006.

Hence, these three writ petitions.

According to the learned counsel for the petitioners, the petitioners by agreements dated 13.2.1986 and 16.2.1986 purchased the land in question from Buddha Ram & Khera Ram and Buddha Ram & Khera Ram executed the agreements to sale on 13.2.1986 and 16.2.1986. The petitioners took possession of the land in dispute and constructed boundary wall and one room over the land. One Ashu Singh, subsequent to that, and that too after almost 10 years, entered into agreement to purchase part of same land measuring 30 ft. X 90 ft. Either Budhha Ram or Khera Ram had no right to sell the property to Ashu Singh. Therefore, Ashu Singh could not have entered into agreement to sell the property to respondents no.3 to 5 as claimed by the respondents no.3 to 5 by agreement dated 14.5.2003. Despite this fact, the respondents no.3 to 5 applied for grant of patta

before the Municipal Board, Balotra under Section 90B of the Rajasthan Land Revenue Act. The Municipal Board decided to accept the surrender of land and granted patta to the defendants no.3 to 5 and in consequence thereof, executed lease in favour of the respondents no.3 to 5 in the month of April, 2004. The petitioners, therefore, filed suit for injunction on the basis of their agreements to sale dated 13.2.1986 and 16.2.1986 as well as on the basis of their settled possession in pursuance of their agreements dated 13.2.1986 and 16.2.1986. It is submitted that the petitioners' name were already entered in the survey list prepared in the proceedings for conversion of land, copy of which has been placed on record as Annex.9. The petitioners also submitted complaint against grant of patta in favour of the respondents no.3 to 5 upon which enquiry was initiated and in that enquiry, a finding has been recorded that despite earlier agreement to sale in favour of the petitioners, the respondents obtained patta on the basis of the agreement to sale executed by the vendors/transferees. It is also submitted that the petitioners' contention was specific that they are in possession of the land in dispute and their name is also entered in the record of Municipal

Board. In view of the above, there are several questions involved in the suit which requires consideration and, therefore, there is a prima-facie case in favour of the petitioners. It is also submitted that because of rejection of the petitioners' injunction application, the respondents will be free to deal with the property. It is also submitted that during pendency of the suit, the respondents cannot deal with the property in any manner.

Learned counsel for the respondents submitted that the petitioners filed suit for mere injunction and they were neither in possession nor are in possession of the suit property. It is also submitted that the respondents are having valid title in their favour and, therefore, no injunction could have been granted. Otherwise also, two courts below concurrently decided in favour of the respondents, therefore, this Court will not to interfere in the same.

I considered the submissions of the learned counsel for the parties and perused the facts of the case.

It appears from the detailed orders passed by

the two courts below in these proceedings that both the courts below carefully considered the pleadings and arguments of the parties and also considered the documents placed on record.

It appears that the petitioners' entire contention is that they have agreement to sale in their favour and that too was of the year 1986. If Annex.9 is considered, then it appears that some proceedings for land conversion might have been initiated and in that proceedings, the names of the petitioners may have been entered, then the facts remained unexplained that how the land remained agriculture uptill the respondents obtained patta from the Municipal Board. Be it as it may be, from the facts which have not been explained by the petitioners, it is not clear that how the petitioners are in possession of the property also. In view of the above, I do not find any reason to interfere in the impugned orders.

In view of the above, these writ petitions, having no merits, are hereby dismissed.

Since the rejection of the injunction application does not mean that there is no litigation pending and, therefore, in case, the petitioners will be entitled to any relief in the suit, the Court after trial may grant relief

according to law and in that situation, if the respondents will raise any construction on the property in dispute, they will not be entitled to have equity in their favour and construction, if will be raised, that will be at the risk of the respondents.

(PRAKASH TATIA), J.

S.Phophaliya